

WP(C) 1060/2001

BEFORE

THE HON'BLE MR JUSTICE RANJAN GOGOI

Heard Mr.U.K.Nair, learned counsel for the petitioner and Mr. K.H.Choudhury, learned Sr. Counsel appearing for the Respondent No.4. Also heard Ms.M.Gogoi, learned Standing Counsel, Education.

An order dated 13.6.2001 promoting the Respondent No.4 to the post of Head Master in Adarsh Hindi Vidyalaya, Mariani, has been assailed in the writ petition. The aforesaid promotion of the petitioner was made on the basis of the selection and recommendation of the State Selection Board, Assam as approved by the Govt. on 01.12.99.

Notwithstanding the several other grounds on which the challenge in the present writ petition has been founded and the counter pleadings of the Respondent No.4 in this regard, there is a vital aspect of the case which has come to the notice of the Court on the basis of the materials on record. As the said aspect of the case goes to the root of the matter, the Court considers it appropriate to deal with the same at the very outset, and, therefore, determine if any further consideration of any other issue/question would be required.

Under the provisions of the Assam Secondary Education (Provincialised) Service Rules, 1982, particularly the Rule 10 thereof, the appointing authority is required to make an assessment of the likely number of vacancies required to be filled up by promotion in the coming year in each cadre and in each School. This is required to be done before the end of the calendar year. Thereafter the appointing authority is required to furnish necessary documents and information to the Selection Board with the request to recommend a list of candidates eligible for promotion in respect of each School. The list recommended by the selection Board, after due approval, is to serve as the basic document on which promotions to the vacant posts are required to be made. In this regard, it must be specifically noted that the select list is required to be prepared separately for each school.

In the present case, the petitioner asserts that the selection process started mid way in the year 1999 and selections were held in August, 1999. The said fact though disputed on behalf of Respondent No.4 at the hearing has been admitted in paragraph 11B of the counter affidavit filed by the said Respondent No.4 wherein it has been stated that the selection process commenced in the month of March, 1999. Though the precise date on which the selection was held is not available what is evident from the materials on record and, therefore, beyond any dispute is that the selection process commenced in the month of March, 1999 and the select list prepared by the Selection Board was approved by the Govt. on 1.12.99.

Certain other facts that are relevant and related to the issue involved may now be noticed. The earlier incumbent in the post of Head Master of the Adarsh Hindi Vidyalaya, Mariani, one Niwas Pathak, was due to retire on 31.5.99. The said person had instituted a writ petition before this Court registered and numbered as WP(C) 1931/99 seeking a direction from the Court for his continuance in service up to the age of 60 years i.e. till 31.5.2001. The aforesaid writ petition was allowed by this Court by an order dated 28.4.99 with a direction that the petitioner will be allowed to continue in service till 60 years but he will not be entitled to any pension. This is a position, it must be noticed, which is clearly envisaged by the Rules in force.

The aforesaid order of the Court dated 28.4.99 had foreclosed the vacancy in the School in question which was due to occur on the superannuation of the serving incumbent on attaining the age of 58 years on 31.5.2001. In other words, by virtue of the Court's order, the vacancy in the post of Head Master in the Adarsh Hindi Vidyalaya, Mariani was not to occur till 31.5.2001. The said vacancy, therefore, under the Rules in force, could not have been legitimately embraced by the selection process of the year 1999 culminating in the select list dated 1.12.99. The Respondent No.4, admittedly, was promoted to the post of Head Master by the order-dated 13.6.2001 on the basis of same select list dated 1.12.99. If the selection held and the select list prepared could not have covered the va

cancy in question by operation of law and in view of the Court's order dated 28.4.99, it will not be difficult to sustain the consequential order of promotion dated 13.6.2001 made on basis of the said selection.

For the above reasons, this writ petition has to be allowed, which I hereby do. The promotion order dated 13.6.2001 is set aside and quashed.